

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Rules and Regulations Implementing the)
Telephone Consumer Protection Act of 1991)

CG Docket No. 02-278

C/G Docket No. 92-90

INITIAL COMMENTS OF**LSSi CORP.**

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COMMENTS OF LSSi CORP.

LSSi Corp. ("LSSi"), by its attorneys, respectfully submits these initial comments in response to the NPRM,¹ issued on September 18, 2002, in the above-captioned proceeding regarding the technical feasibility of FCC implementation of a national do-not-call database

LSSi is the nation's leading independent provider of directory assistance database services. LSSi builds, markets and supports advanced national and international directory database solutions for directory assistance service providers and corporate clients. LSSi also has a growing Internet presence with its e-business support services. LSSi is an e-commerce enabler, permitting companies engaged in on-line commerce to perform extremely fast, up-to-date credit checks and identity verifications to speed transactions and improve customer service.

LSSi's corporate headquarters are in Edison, New Jersey, with development resources and data centers in Morrisville, North Carolina; Waynesboro, Virginia; and Lamezia Terme, Italy. The LSSi team boasts the most capable independent concentration of database

¹ Notice of Proposed Rulemaking, *Rules and Regulations Implementing the TCPA of 1991*, CG Docket No. 02-278, FCC 02-250 (rel. Sept. 18, 2002) ("NPRM").

management skills available today. **As** a result, LSSi has been an innovator developing crucial advancements in directory assistance and database management.

INTRODUCTION AND SUMMARY

On December 20, 1991, Congress passed the Telephone Consumer Protection Act,² designed to protect consumer privacy and public safety through restrictions on unsolicited advertising using telephones and facsimile machines.’ The Federal Communications Commission (“FCC” or “Commission”) was charged with implementation of the TCPA. Among its many provisions, the TCPA specifically authorizes the Commission to “require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations.”⁴ These comments **address** the Commission’s request for information on the technical feasibility of such a course of action,

In initially designing rules to implement the TCPA, the FCC declined to create a national do-not-call database.’ The Commission concluded that “[a] national database would be costly and difficult to establish in a reasonably accurate form.”⁵ and that such a database would not be “an efficient, effective or economic means of avoiding unwanted telephone solicitations.”⁶ The

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (“TCPA”).

³ See NPRM ¶ 2.

⁴ 47 U.S.C. § 227(c)(3).

⁵ Report and Order, *Rules and Regulations Implementing the TCPA of 1991*, CC Docket No. 92-90, 7 FCC Rcd 8752, 8760-61, ¶¶ 14-15 (1992) (“TCPA Order”).

⁶ TCPA Order ¶ 14.

TCPA Order ¶ 15.

Commission instead opted for implementation of company-specific do-not-call databases, requiring each company engaged in telemarketing to develop and maintain a list of consumers that had requested not to be contacted for telemarketing purposes.' Such a program shields consumers from repeat telemarketing overtures from entities that contact them, but fails to enable consumers to more generally insulate themselves from telemarketing even if that is the individual consumer's desire.

In the decade since implementation of the TCPA, both telemarketing practices and database technologies have changed significantly. As the Commission's NPRM notes, as many as 104 million telemarketing calls are made to consumers and businesses every day." New technologies, including autodialers, predictive dialers and fax broadcasters, currently enable more telemarketers to reach more consumers more often than ever before.¹⁰ Current rules, while applicable to these new technologies, often fail to stem the tide of solicitations.¹¹ As the Commission's NPRM acknowledges, this proliferation of marketing techniques has increased consumer dissatisfaction with the current regulatory regime governing telemarketing practices.¹²

Simultaneously, the database management industry has evolved to employ cutting-edge technologies, like Interactive Voice Response ("IVR"), in order to gather, maintain and utilize large amounts of data efficiently and inexpensively. LSSi has consistently been a vanguard of

⁸ TCPA Order ¶¶ 20-24

"NPRM ¶ 7

¹⁰ *Id.*

¹¹ *See, e.g.,* Notice of Apparent Liability for Forfeiture, *Fax.com, Inc. Apparent Liability for Forfeiture*, File No. EB-02-TC-120 (rel. Aug. 7, 2002).

¹² NPRM ¶ 8.

the industry's evolution, granting it an important and unique perspective on the Commission's proposed course of action in this proceeding.

In its NPRM, the Commission notes that, in the last two years alone, the FCC's Consumer and Governmental Affairs Bureau has received over 26,900 TCPA-related inquiries and over 11,000 complaints about telemarketing practices.¹³ Telemarketing is the second greatest area of complaint received by the Commission, after only billing and service rates.¹⁴ In response to the concerns expressed by consumers, many states have implemented or are considering regulations to establish statewide do-not-call databases.¹⁵ Likewise, the Federal Trade Commission ("FTC") has proposed the establishment of a national do-not-call database under its Telemarketing Sales Rule.¹⁶ Unfortunately, these efforts may not fully address consumer concerns about telemarketing: Statewide do-not-call lists are inherently incomplete from a national perspective and result in significant duplication of effort. The FTC's proposed database, while conceived as national in scope, would exempt telemarketing in key industries, including telecommunications, banking and insurance.

As a result of consumer concerns over privacy, as well as new practices and technological developments in the industry, the Commission seeks to reexamine its previous determination regarding the desirability and feasibility of a national do-not-call database. Whether a national do-not-call database is ultimately implemented is a policy matter for the

¹³ NPRM ¶ 8.

¹⁴ NPRM ¶ 8.

¹⁵ See NPRM ¶ 9, n. 48 (presenting a list of those states that have enacted do-not-call regulations and a list of those states that are considering such regulations).

¹⁶ Federal Trade Commission, Notice of Proposed Rulemaking, *Telemarketing Sales Rule*, 67 Fed. Reg. 4492 (Jan. 30, 2002) ("FTC NPRM").

Commission to decide. However, any examination of the relevant factors must take note of the advancements in the database management industry, including new and cost-effective data gathering, data manipulation and data access technologies, more fully described herein. Such advancements should allay Commission concerns about the costs and feasibility of establishing and maintaining a national do-not-call database.¹⁷

DISCUSSION

I. INNOVATION IN DATABASE MANAGEMENT MITIGATES THE FCC'S PREVIOUSLY EXPRESSED CONCERNS

The Commission requests comment on the extent to which new techniques and technologies in the database management industry mitigate its previously-expressed concerns regarding the cost and feasibility of developing and maintaining a national do-not-call database." **As** a leading provider of database management services, LSSi is fully familiar with the latest technological advances in the industry. Database technologies, such as those employed by LSSi in the management of its national directory assistance database, can be applied to permit the database administrator to develop, implement and maintain a national do-not-call database with a minimum of cost and aggravation and a maximum of security and accuracy

A. Technological impediments to a National Do-Not-Call Database No Longer Exist

In declining to implement a national do-not-call database in 1992, the Commission noted that technological impediments made such a database impractical.¹⁹ Specifically, the Commission found that "frequent updates would be required [and] regional telemarketers would

¹⁷ NPKM ¶ 51

¹⁸ *Id*

¹⁹ 1 CPA Order, 7 FCC Rcd at 8760.7 14

be forced to purchase a national database[.]”²⁰ LSSi’s long experience in the management of directory assistance databases demonstrates that such constraints no longer exist. As the leading independent provider of directory assistance database services, LSSi currently updates its databases automatically on a daily basis, and routinely aggregates and disaggregates regional and national data in order to permit its customers to access data unique to a particular subset of subscribers, including subsets based upon geographic region.

1) Frequent updates are easily and automatically processed

Most updates of the national do-not-call database may follow automatically from information that local exchange carriers and directory assistance providers already receive in order to provide up-to-date directory assistance services. LSSi currently obtains updated disconnect information daily through feeds from its local exchange carrier licensors. The national do-not-call database could be constructed to accept and process such updates as they come in, resulting in maximum database accuracy on a continual basis.²¹ Area code changes could be implemented through similar automated procedures. However, because no mechanism currently exists to track the movement of a subscriber between carriers, re-registration will be required where the subscriber changes telephone numbers or carriers. Such updates are easily accomplished by means of an automated registration process such as that described below. Alternatively, carriers could be required to provide data to enable better tracking of subscribers as they move between carriers.

²⁰ NIRM ¶ 51.

²¹ This use of directory assistance listing data would be fully consistent with Commission policies permitting use of such data for any **lawful** purpose. First Report and Order, *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, FCC 01-27, CC Docket No. 99-273 ¶ 28 (rel. Jan. 23, 2001).

LSSi's directory assistance source files are automatically updated with assignment, disconnect and reassignment information each day with feeds received in a wide variety of formats from LSSi's many licensors, including every major telecommunications provider in the United States. Proprietary LSSi software, using the full capability of state-of-the-art symmetric processors, creates high-speed data-building engines of immense capacity to reformat and process this incoming data for optimal storage and maximum search speed. Optimized listings become the active LSSi on-line database, available to service inquiries. These techniques, as applied to disconnect information, translate well into the context of a national do-not-call database and would enable the database administrator to process most updates automatically.

However, because carriers currently have no means of tracking subscribers as they move between telephone carriers, LSSi has no idea whether the disconnect of one carrier and the assignment of another carrier relate to a single subscriber. Consequently, the data currently provided by the carrier does not permit a database administrator to ascertain whether to maintain the end user on the do-not-call list. Until such a mechanism is developed, subscribers must reregister every time they change carriers or telephone numbers. Fortunately, such registration can be a simple matter.

LSSi envisions a registration procedure along the lines of the following: the subscriber calls a toll-free number that terminates at a scalable hunt group of IVR ports. A scalable architecture allows the database administrator to meet the FCC's pre-established design parameters for peak usage. The IVR voice prompts the subscriber to enter the telephone number that he would like listed in or removed from the do-not-call database and compares that number to the ANI routed by the call. Rotary dial subscribers would be processed using voice recognition technology instead of touch-tone inputs. Once the subscriber is verified, the IVR

processes registration and/or updates to the subscriber's database information, including, for example, number of attempts, date and time of registration/update, **ANI**, the subscriber's dual-tone multi-frequency or voice recognition input, and the subscriber's preference for receiving telemarketing calls. It is a simple matter for the database administrator to process more specific caller preferences including, for example, type of calls prohibited and time of day for solicitations. The IVR also prompts the subscriber to check the status of her telephone number within the national do-not-call database.

While "nearly one-fifth of all telephone numbers change each year,"²² LSSi has designed its data collection and processing system technologies to facilitate frequent updates at a minimum of cost and effort. More importantly, such updates follow automatically from information that LSSi already receives in its capacity as an independent directory assistance services provider, requiring no additional effort on the part of the subscriber. In similar fashion, disconnect and area code updates to the national do-not-call database could be automatically accomplished. Using existing technology currently deployed by LSSi, a simple re-registration process, requiring no real user sophistication could be easily implemented. A national do-not-call database modeled on these techniques would easily and cost effectively handle database updates, resulting in an extremely accurate database with a minimum of effort.

2) Database technologies provide flexibility in outputs

LSSi currently employs advanced systems technology to permit a variety of access options to its directory assistance databases, including the ability of the user to manipulate data to produce a tailored database for specific purposes. Access options that are already available at

²² NPRM ¶ 51.

LSSi for directory assistance data include a download of specific database information, a database search for specific entry information, a tailored sort of specific database information, and verification of subscriber listing status. These alternatives could be used to implement restricted and varied access to customer do-not-call data for use by telemarketers. Telemarketers could tailor database searches to return results for a specific subset of subscribers, including subsets based upon NPA, NXX, state of residence or zip code. Regional telemarketers would thus be spared the need to purchase a national database, and both consumers and telemarketers alike would benefit from efficient database access.

More specifically, the following access protocol could be used to maximize flexibility: access to the national do-not-call database would be obtained by authorized users through a common browser used to access a secure Internet login site. LSSi currently maintains secure Internet sites for access to database information for both itself and its customers. In LSSi's experience, access of this type does not require user sophistication and would be appropriate to all types of telemarketing entities. The prospective user enters identifying information, which is checked against the user database. Once authenticated, the user is granted access to database information corresponding to the appropriate privilege level. In other words, law enforcement officials and regulatory agents may be granted higher levels of access, than would telemarketers.

Database management technologies could be applied and used in the context of a national do-not-call database to allay the Commission's concerns regarding frequent updates and the need for regional telemarketers to purchase a national database. Because such technological impediments no longer exist, the Commission can proceed with the establishment of a national do-not-call database under the TCPA.

B. Privacy and Security Concerns Have Technological Solutions

In the 'TCPA Order, the Commission also expressed concern regarding the impact of a national do-not-call database on the protection of consumer privacy, including whether the confidentiality of subscribers having unpublished or unlisted numbers could be maintained.²³ Such privacy concerns, along with related concerns regarding the security of registrants' information, continue to occupy the mind of the Commission today.²⁴ However, efficient and cost-effective privacy and security technologies are currently available. Accordingly, the Commission should conclude that technological solutions can protect subscriber privacy and data security. These issues, therefore, should not preclude FCC action *to* establish a national do-not-call database.

In its role as directory assistance provider, LSSI is uncompromising in its protection of subscriber privacy. LSSI employs technologies designed to exclude information pertaining to unlisted or unpublished subscribers from its directory assistance databases to prevent the release of any such information. The Commission has recognized similar privacy concerns in this proceeding;²⁵ however, the issue is complicated because simply having an unlisted or unpublished number does not mean that a subscriber will not be contacted by telemarketers. The proliferation of marketing lists and the existence of autodialers means that any subscriber, listed or unlisted, may be subject to unwanted telemarketing calls

To the extent that an unlisted subscriber wishes to avoid telemarketing calls by registering her number with the database administrator, she can do so with a minimum of

²³ TCPA Order, 7 FCC Rcd. at 8759, ¶ 12

²⁴ See NPKM ¶¶ 51-52

²⁵ *Id*

exposure. Specifically, while the subscriber's telephone number would be required by the database administrator to ensure registration in the national do-not-call database, name and address information would not be. As previously described, the registration process would require a simple check of the subscriber's input against the ANI routed by the call. Once confirmed, the subscriber's number would be registered in the database either with, or in this case without, additional identifying information. In this way the subscriber's privacy is protected to the maximum extent possible, while information released to telemarketers regarding the unlisted subscriber would be minimally useful.

Security of its database information is also a matter that LSSi takes very seriously. To ensure such security, the national do-not-call database could be replicated in two diverse and autonomous data centers in order to provide redundancy in the network, failover capability and maximum availability to subscribers. Each data center could be connected via the facilities of a different local exchange carrier to a different Internet service provider. LSSi currently uses proprietary security measures to ensure physical and digital security of its directory assistance database system and its data from malicious or inadvertent compromise. LSSi also builds additional technology into its databases to assist in the detection of user fraud. The same techniques could be applied to ensure the security of the national do-not-call database.

Given the privacy- and security-related technologies that are currently employed by database managers, the FCC should feel confident that proper protections are both available and effective.

**II. A COMMISSION-DEVELOPED NATIONAL DO-NOT-CALL DATABASE
WOULD ENSURE HIGHER UTILIZATION RATES**

The Commission requests comment on whether and how its national do-not-call database would work in concert with any eventual FTC-implemented or mandated national do-not-call

database.” On January 22, 2002, the FTC released its own Notice of Proposed Rulemaking, proposing to modify its Telemarketing Sales Rule to implement additional restrictions on telemarketers in order to better protect consumer privacy.²⁷ Among other modifications, the FTC explicitly proposed the creation of a national do-not-call database.²⁸ Unfortunately, the FTC’s authority does not extend to certain industries, including banking, insurance, and telecommunications.²⁹ As a result, any eventual FTC national do-not-call database would be inapplicable to important and numerous industries involved in the telemarketing of goods and services to consumers.

The Commission may wish to use its authority under the TCPA to complement the efforts of the FTC to establish a national do-not-call database. The TCPA grants the Commission the authority to “require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations.”³⁰ Significantly, the Commission’s authority is not restricted to a limited subset of industries.³¹ Absent Commission action on this matter, the FTC’s proposed national do-not-call

²⁶ NPRM ¶ 56

²⁷ Notice of Proposed Rulemaking, *Telemarketing Sales Rule*, Federal Trade Commission, 67 Fed. Reg. 4492 (Jan. 30, 2002) (“FTC NPRM”).

²⁸ FTC NPRM at 4493. The Commission should note that LSSI was and continues to be an active participant in this proceeding before the FTC. LSSI’s technical proposal for management of the FTC’s national do-not-call database is consistent with that proposed herein. See Letter from E.P. Tierney, Vice President of Marketing, LSSI Corp., to Mr. David Torok, Staff Attorney, Division of Marketing Practices, Federal Trade Commission (July 30, 2002).

²⁹ See 15 U.S.C. § 45(a)(2)

³⁰ 47 U.S.C. § 227(c)(3).

³¹ While its authority is not limited to a subset of industries, the Commission previously applied its rules only to commercial calls. TCPA Order, 7 FCC Rcd. at 8773-74, ¶ 40.

database will be, at best, partially effective in achieving its purpose. Companies in those industries that do not fall under the FTC's authority engage in a significant portion of the telemarketing of which consumers complain. Excluding those industries from regulation would be unfair to companies covered by the FTC Act and confusing to consumers. It would also not (as intended) stem the flow of telemarketing calls to those consumers that prefer to maintain their privacy. Should the Commission determine that a national do-not-call database is warranted, it should endeavor to work cooperatively with the FTC to ensure that the single national do-not-call database will apply to the full extent of the FCC's authority to regulate telemarketing under the TCPA, including requiring use of do-not-call data across the full range of industries telemarketing to consumers.

Because the effectiveness of a national do-not-call database depends upon ease of registration by subscribers and ease of use by telemarketers, cooperation between the agencies is essential. Simply stated, consumers will not utilize a system that requires them to adhere to differing registration policies, and telemarketers will find it difficult to comply with two divergent regulatory regimes as opposed to one. Therefore, should plans for a national do-not-call database move forward, in order to maximize use by both consumers and telemarketers alike, the Commission and the FTC should work cooperatively to develop a single, ubiquitous national do-not-call database and to address any apparent inconsistencies between their plans.

III. THE FCC SHOULD SEEK AN ADMINISTRATOR WITH PROVEN DATABASE MANAGEMENT ABILITIES

The TCPA enumerates several requirements that the Commission must follow in adopting a national do-not-call database, should it decide to do so.³² Among these is the

³² 47 U.S.C. § 227(c)(3)(A-I).

requirement that the Commission “specify[] a method by which to select an entity to administer the database.” In order to ensure that any eventual national do-not-call database meet its objectives, the Commission must ensure that the chosen database administrator is experienced in the field of database management. Selection of an experienced administrator will ensure that any eventual national do-not-call database will be successful in implementation, execution, and maintenance. Such will encourage widespread use by consumers and ease of access by telemarketers. In short, the hiring of an experienced database administrator will enable the Commission to achieve its objectives.

The success of any national do-not-call database will be determined, in part, by the extent to which such a system is user-friendly. A registration process that involves numerous individual steps for the subscriber to follow will not be widely used and, thus, will fail to achieve its purpose. However, a user interface that is quick, simple, and easy to follow, will lend itself to widespread public use, generating efficiency savings for both consumers and telemarketers alike, and ultimately benefiting the public interest. Alternatively, the Commission could impose an obligation to track information, including whether a customer wants to be on or remain on the do-not-call database, on carriers. The data could then be automatically updated by the database administrator in much the same manner as directory assistance data is updated currently.

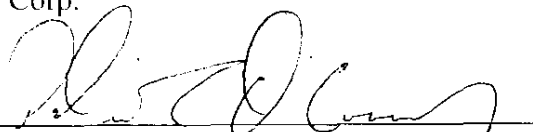
³³ 47 U.S.C. § 227(c)(3)(A)

CONCLUSION

For all these reasons, the Commission should (i) recognize that technology has mitigated its previously-expressed concerns regarding the feasibility and cost of a national do-not-call database; (ii) seek cooperation with the FTC in any eventual national do-not-call database; and (iii) choose a database administrator with experience in the field of database management.

Respectfully submitted,

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Dated: December 9, 2002

CERTIFICATE OF SERVICE

I, Leslie LaRose, do hereby certify on this 9th day of December 2002, that I have served a copy of the foregoing via hand delivery and U.S. Mail, postage pre-paid, to the following:



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